

ASSEMBLY BILL

No. 883

Introduced by Assembly Member Cook
(Principal coauthor: Senator Berryhill)

February 17, 2011

An act to amend Section 290.005 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 883, as introduced, Cook. Sex offenders: registration.

Existing law, the Sex Offender Registration Act, requires persons who have been convicted of specified crimes to register as sex offenders, including persons who have been convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more specified sex crimes.

This bill would instead require registration for any person who has been convicted in any other court, including any state, federal, or military court, of any offense that, based on the elements of the conviction offense or proven or stipulated facts in the record of conviction, as specified, would have been punishable as one or more of the above-referenced specified sex crimes.

Existing law provides that any person who would be required to register while residing in the state of conviction for a sex offense committed in that state shall be required to register under the act except that, for offenses similar to specified California offenses, there is no registration requirement unless the out-of-state offense contains all of the elements of the specified California offense.

This bill would provide that for the above-referenced offenses, there is no registration requirement unless the out-of-state offense, based on the elements of the conviction offense or proven or stipulated facts in the record of conviction, contains all of the elements of the specified California offense.

Existing law provides that any person who is required to register who willfully violates any requirement of the act is guilty of a misdemeanor or a felony, as specified.

Because this bill would change the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 290.005 of the Penal Code is amended
- 2 to read:
- 3 290.005. The following persons shall register in accordance
- 4 with the Act:
- 5 (a) ~~Any~~ Except as provided in subdivision (c), any person who,
- 6 since July 1, 1944, has been, or is hereafter convicted in any other
- 7 court, including any state, federal, or military court, of any offense
- 8 that, if committed or attempted in this state, *based on the elements*
- 9 *of the conviction offense or proven or stipulated facts in the record*
- 10 *of conviction*, would have been punishable as one or more of the
- 11 offenses described in subdivision (c) of Section 290, including
- 12 offenses in which the person was a principal, as defined in Section
- 13 31.
- 14 (b) Any person ordered by any other court, including any state,
- 15 federal, or military court, to register as a sex offender for any
- 16 offense, if the court found at the time of conviction or sentencing
- 17 that the person committed the offense as a result of sexual
- 18 compulsion or for purposes of sexual gratification.

1 (c) Except as provided in subdivision (d), any person who would
2 be required to register while residing in the state of conviction for
3 a sex offense committed in that state.

4 (d) Notwithstanding ~~subdivision (e)~~ *any other law*, a person
5 convicted in another state of an offense similar to one of the
6 following offenses who is required to register in the state of
7 conviction shall not be required to register in California unless the
8 out-of-state offense, *based on the elements of the conviction offense*
9 *or proven or stipulated facts in the record of conviction*, contains
10 all of the elements of a registerable California offense described
11 in subdivision (c) of Section 290:

12 (1) Indecent exposure, pursuant to Section 314.

13 (2) Unlawful sexual intercourse, pursuant to Section 261.5.

14 (3) Incest, pursuant to Section 285.

15 (4) Sodomy, pursuant to Section 286, or oral copulation,
16 pursuant to Section 288a, provided that the offender notifies the
17 Department of Justice that the sodomy or oral copulation conviction
18 was for conduct between consenting adults, as described in Section
19 290.019, and the department is able, upon the exercise of
20 reasonable diligence, to verify that fact.

21 (5) Pimping, pursuant to Section 266h, or pandering, pursuant
22 to Section 266i.

23 SEC. 2. The Legislature finds and declares that it intends by
24 this legislation to address the holding of *In re Rodden* (2010) 186
25 Cal.App.4th 24. This act is necessary to clarify the law on sex
26 offender registration of out-of-state sex offenders. There is an
27 immediate need for an amendment clarifying that the statute
28 permits consideration of adjudicated or stipulated nonhearsay facts
29 on the record of out-of-state, federal, or military convictions to
30 determine whether the offense would have been punishable as a
31 mandatory registerable offense under California law. Without this
32 amendment to the statute, many high-risk sex offenders would not
33 be required to register as sex offenders under the court's holding
34 in *In re Rodden*.

35 SEC. 3. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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